

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Orange, Texas

DEGUSSA ENGINEERED CARBONS, LP

Employer

and

Case No. 16-RC-10576

PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND
ENERGY WORKERS INTERNATIONAL UNION

Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer, Degussa Engineered Carbons, LP, operates a facility in Orange, Texas, the only facility involved herein, where it manufactures carbon black. The Petitioner, Paper, Allied-Industrial, Chemical and Energy Workers International Union, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit, as amended at the hearing, of approximately 37 employees consisting of all production, maintenance, laboratory, and shipping department employees excluding all other employees, guards and supervisors as defined in the Act. A hearing officer of the Board held a hearing and the Employer filed a brief¹ with me.

As evidenced at the hearing, the parties disagree on the following two issues: (1) whether five employees classified as shift leaders are statutory supervisors who should be excluded from the unit; and (2) whether three employees classified as cogen technician, laboratory quality

¹ During the hearing, the Petitioner waived its right to file a brief. The Employer's brief has been duly considered.

assurance specialist and transportation coordinator share a sufficient community of interest so as to mandate their inclusion in the unit.

The Employer contends that shift leaders are supervisors within the meaning of the Act and should therefore be excluded from any unit found appropriate, while the Petitioner contends they are not supervisors and should be included in the unit. The Petitioner seeks to exclude the laboratory quality assurance specialist, the transportation coordinator, and the cogen technician contending they lack a sufficient community of interest with the petitioned-for employees, whereas the Employer contends these three employees share a community of interest with the petitioned-for employees and should be included in the unit.

Based on the record evidence, I conclude that the Employer has not met its burden of establishing that the five shift leaders are statutory supervisors within the meaning of the Act and will include them in the unit. I have also concluded that the cogen technician, the laboratory quality assurance specialist, and the transportation coordinator share a sufficient community of interest with the petitioned-for employees so as to mandate their inclusion in the unit. The factual basis and analysis for these findings follow below.

STATEMENT OF FACTS

At its facility in Orange, Texas, the Employer manufactures carbon black, a reinforcing and pigmenting agent used primarily in the rubber industry for tires, plastics and inks. The Orange plant has the capacity to produce 180 million pounds of carbon black annually and operates twenty-four hours a day, seven days a week. The manufacturing process involves injecting carbon black oil into refractory-lined furnaces, with heat temperatures of approximately 3,600 degrees, which causes the carbon to break apart from the gases in the oil to create a uniform carbon particle. From the furnace, the particle is conveyed onto a bag filter where the

carbon is separated from the gas streams. From there, the product is conveyed through a pelletizer process making it easy to ship. The product is finally moved onto tanks for shipping. The Employer maintains seven furnaces, operating six at any given time, for this process. These furnaces connect to three separate production lines. The combination of these furnaces creates a unit. The Employer maintains three units for this process.

The Employer maintains a fourth unit for use in a cogeneration (cogen) process where it produces electricity that is sold to the electrical grid. This cogen process involves injecting the waste gases from the carbon black production process into a boiler creating a high-pressure steam that, in turn, is used for generating turbines that create electricity. The cogen facility or building is physically located on the Orange plant premises and is connected to the carbon black process by pipes that carry the waste gases. It is connected to the grid system by utility lines.

At the Orange plant, the Employer employs, in total, approximately fifty employees. Excluding agreed upon statutory supervisors,² the Employer employs between 35 to 40 employees. The plant is structured into four main departments including operations, maintenance, laboratory (lab), and shipping. The record revealed that all of the at-issue employees in this proceeding work in one of these four departments.

The operations or production department includes operators, DCS technicians, a cogen technician and shift leaders. The maintenance department includes the instrument/electrical (I/E)

² The parties stipulated, and I find, that Dean L. Agerton, lab supervisor; Kevin E. Beasley, warehouse supervisor; Jackie C. Dennis, shipping supervisor; Alton R. Hanks, maintenance manager; Darrell E. Jackson, process engineer; Lisa L. LeBlanc, purchasing supervisor; Richard C. Maxwell, material flow manager; Richard P. Merchant, IE supervisor; Vernon D. Myers, technical manager; Danny R. Percy, maintenance supervisor; Michael J. Smith, operations manager; Anneta K. Von Toure, human resources supervisor; and Larry G. Ward, project coordinator, are supervisors within Section 2(11) of the Act, and as such, possess and exercise the ability to direct and discipline employees, utilizing independent judgment in exercising such authority, and therefore should be excluded from the bargaining unit. The parties further stipulated, and I find, that Van W. Hudson, plant manager, and Jeffrey Curtis Malenky, vice-president of human resources, are supervisors within the meaning of Section 2(11) of the Act, and as such, possess and exercise the ability to hire and discharge employees, and therefore should be excluded from the bargaining unit.

technician and maintenance technician. The laboratory includes lab technicians and a lab quality assurance specialist. The shipping department includes shipping associates and a transportation coordinator. Of these employees, the parties stipulated that any unit found appropriate should include the shipping associates, the lab technicians, operators, DCS technicians, I/E technician and maintenance technician, and should exclude all office clerical employees, all professional employees and all guards. I find that these employees share a community of interest and will include them in the unit.

I. Operations

In operations or production, the Employer maintains a central control room that contains the computerized systems for the entire plant including the cogen process. In the control room, shift leaders monitor the entire plant process on the distributive control system (DCS) or the control board. In addition to the shift leaders, two types of operators work outside the control room. Reactor cogen operators work on the front end of the process including the reactor, cogen and bag filters. Mixing handling system operators work on the mixing side including the drying system and conveying system. The Employer also maintains a cogen technician who monitors and maintains the cogen unit. The DSC technician (Darby Mathis) also works in the operations department. Michael Smith, operations manager, oversees the department. As stated above, the parties stipulated that the bargaining unit should include operators and DCS technicians. At issue are the shift leaders and the cogen technician.

A. Shift Leaders

The Employer contends the five shift leaders are statutory supervisors and seeks to exclude them from the unit. The Petitioner would include the five shift leaders in the unit.

The record revealed that the Employer currently employs five shift leaders including Ronald Enard, Luis Herrera, Joe H. Lively, Robert K. Smith and Stephen L. Speck. The shift

leaders report directly to Operations Manager Michael Smith and are all hourly employees who work in the control room. Each works a varying 12-hour shift for a total of around fifteen days per month. All employees, including shift leaders, operators and the operations manager, wear the same uniforms. Shift leaders and operators receive the same benefits including vacation, health, medical and dental. With the possible exception of retirement benefits, supervisors also receive the same benefits as other employees including operators.

As set forth in the formal job description, the general purpose of the shift leader is:

Directs one shift of carbon black manufacturing at the Orange plant. Performs a variety of duties necessary to produce, pelletize, dry, test and route carbon black to loading tanks. Monitors process equipment to insure product quality. Performs maintenance and makes minor repairs to production equipment. Reports operating problems to supervisor. Assisting work in a variety of craft skills to construct, repair, and maintain plant equipment, utilities, buildings and related structures necessary to the production of carbon black; detects and reports faulty equipment; sets up and operates various machine tools; portable power and standard hand tools.

Michael Smith described the shift leader position as a control room operator with added supervisory duties. He testified that the shift leader position was created in February 2004. Prior to the shift leader position, the Employer maintained separate shift supervisor positions and control room or board operators. However, in June 2002, after eliminating an outside operator position, the shift supervisor position became a working supervisor position requiring the shift supervisor to perform outside operator duties. The Employer then determined to move the supervisory duties to the control room operator because it made more sense to have the control room operator, who had more data and more information than anyone else in the plant and was constantly monitoring the process, in charge of the shift versus an outside person. This plan was implemented in February 2004 with the creation of the shift leader position. The then existing shift supervisors either became a shift leader or took positions as operators. The then existing control room operators received a change in job description to shift leader and received a raise of approximately \$1.48 per hour.

Michael Smith testified that one of the principal responsibilities of the shift leader is to direct the activity of the shift to ensure the efficient operation of the plant, and that production, volume and quality goals are met. During normal business hours (Monday through Friday, 7:00 a.m. to 5:00 p.m.) shift leaders direct the outside operators who report to and receive their daily routines and duties from the shift leaders. After normal business hours, weekends and holidays, the shift includes the shift leaders, operators, shipping employees, I/E technician and lab technicians. According to Michael Smith, all employees working outside normal business hours answer to the shift leader. For example, if employees need to go home sick or report an absence or tardy, they contact the shift leader.

Robert Smith, current shift leader and former acting shift supervisor/former control board operator, testified to the contrary that shift leaders instruct or direct the operators but only at the direction of Michael Smith. Either by telephone or email, the operations manager leaves him directions about production switches or scheduling changes to be made and advises him about what occurred the night before. Before the shift begins, Robert Smith reads the email to the operators, discusses it with the operators and tells them what needs to be done. Although Robert Smith agreed that the shift leader is the highest ranking employee after hours, and on weekends and holidays, he testified that when problems occur with an employee, the employee tells him and he in turn calls that employee's supervisor.

Robert Smith further testified that as a board operator, his job and objective is to make the plant run as best as it can. In that capacity, he communicates with outside operators as to what needs to be done to equipment in the plant. He works with the outside operators not only on a day-to-day basis, but hour-to-hour. They all rely on each other to get the job done. Although he has the authority to direct these employees, he may only do so in a board operator

capacity and only within the scope of their job duties. For example, if a piece of equipment goes down, he contacts an outside operator to check on it. Similarly, if there is an electrical problem, he will contact the I/E technicians, explain the problem and have them check on it. According to Robert Smith, his authority to direct employees as a shift leader is no different than the authority he possessed as a control board operator or as an acting shift supervisor. The only difference between the shift leader position and the control room operator position is the added function of filling out paperwork such as environmental and shift reports. He testified that he does not have the authority to fire, to hire, to grant time off, to reprimand, to discipline or to evaluate employees.

Shift leaders have the authority, per Michael Smith, without consulting him or any other manager, to make changes to the production process such as changing the destination of the product for tanking and to shut down or start up a unit. Robert Smith, however, testified that before he makes any such changes he must contact Michael Smith or some other manager. He only has the authority to make such decisions on his own when he is unable to reach Michael Smith or in emergency situations. Again, Robert Smith testified that this authority does not differ from the authority he possessed as control room operator. This authority falls under general safety and environmental guidelines which he possessed in the capacity of a control room operator.

According to Michael Smith, shift leaders also have the authority to grant or deny permits for maintenance to be performed on a unit. A permit is a safety check to ensure that it is safe for the maintenance procedure to be performed. He admitted, however, that the decision to deny a permit is generally made by a combination of operations employees including operators.

With regard to training, Michael Smith testified that shift leaders are responsible for the training of production and maintenance employees, a function previously performed by the shift supervisor. Robert Smith, on the other hand, while admitting that he has trained employees as a shift leader, testified that he also trained employees as a control room operator. He described the training as reading the standard operating procedure manual and then asking the employee if he understood what was expected. He further testified that training may be and has been conducted by non-supervisory employees in the past.

Michael Smith testified that the creation of the shift leader position and other changes resulted in vacancies for three mixer operators. Because there were three available employees to fill these positions, Michael Smith consulted with the shift leaders as to whom they wanted on their shift. Michael Smith followed the recommendation of the shift leaders and the employees were transferred to the new positions.

Analysis

The Employer contends that the petitioned-for unit is inappropriate because it includes employees (shift leaders) who are supervisors under the Act. The Petitioner contends they are not supervisors and should be included in the unit.

Section 2(11) of the Act, 29 U.S.C. Section 152 (11) (1982), defines a statutory supervisor as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To meet this definition, a person must possess only one of the 12 specific criteria listed, or the authority to effectively recommend such action. *Ohio Power Co. v. NLRB*, 176 F. 2d 385

(6th Cir. 1949), cert. denied 338 U.S. 899 (1949). The exercise of that authority, however, must involve the use of independent judgment. *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000). The Act has been interpreted to set forth a three-prong test for determining supervisory status. Employees are supervisors if “(1) they hold the authority to engage in any one of the twelve listed supervisory functions, (2) their ‘exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment’, and (3) their statutory authority is held ‘in the interest of the employer.’” *Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001). The exercise of “some supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner,” or through giving “some instructions or minor orders to other employees,” does not confer supervisory status. *Chicago Metallic*, 273 NLRB 1677, 1689 (1985). The Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. *See, e.g., Vencor Hospital – Los Angeles*, 328 NLRB 1136, 1138 (1999); *Bozeman Deaconess Hospital*, 322 NLRB 1107, 1114 (1997). The party alleging that an employee is a statutory supervisor bears the burden of proving that such employee possesses and exercises with independent judgment at least one of the statutory indicia delineated in Section 2(11) of the Act. *Kentucky River Community Care, Inc.*, 532 U.S. at 711-712; *Dickinson-Iron Agency*, 283 NLRB 1029, 1034 (1987); *DST Industries*, 310 NLRB 957, 958 (1993); *Sunnyside Home Care Project, Inc.*, 308 NLRB 346, 347 (1992). Lack of evidence is construed against the party asserting supervisory status. *Chevron U.S.A.*, 308 NLRB 59, 61 (1992). Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991).

The record disclosed that the shift leaders are board operators with added duties. The board operators spend the majority of their time working in the control room and have daily and hourly contact with outside operators. No evidence was adduced that the shift leaders have the authority to hire, to fire, to discipline, to evaluate, to promote, to recall, to assign, to reward, or to adjust grievances.

The Employer argues that the shift leaders direct and train other production and maintenance employees, recommend transfers of such employees to other positions and perform other supervisory functions such as handling absences, leave requests and emergencies in the course of their duties. The evidence, however, disclosed that such training has been conducted by control board operators or non-supervisory employees for many years. The evidence further disclosed that the shift leaders' authority to shut down the plant and make changes to process is limited to emergency situations and may only be exercised after approval from management or after the attempt to contact management is futile. That this ability to shut down the plant and make changes to process is non-supervisory in nature is evidenced by the fact that board operators previously could make the same determinations.

The evidence further revealed that the shift leaders direct other employees but only within the scope of their job duties. The evidence failed to establish that the shift leaders responsibly direct other employees through the use of independent judgment.

Although the Employer offered evidence that shift leaders were consulted about who should fill operator positions, the evidence revealed that this was an isolated instance. Similarly while the record revealed that the shift leader is the highest ranking employee at the plant after normal business hours, weekends and holidays, the record also revealed that when employee issues arise, the shift leader contacts the employee's supervisor.

Having considered the record evidence, I find that the evidence is insufficient to establish that the shift leaders possess any of the Section 2(11) indicia so as to require a finding that they are statutory supervisors. I find that the Employer has failed to carry its burden to establish that the shift leaders are statutory supervisors. Further, based on the regular interaction, similar supervision, similar work hours and work conditions, interrelated job functions and similar benefits, I conclude that the shift leaders share such a substantial community of interest with the operators so as to mandate their inclusion in the appropriate bargaining unit.

B. Cogen Technician

The Employer seeks to include John Ochs, cogen technician, in any unit found appropriate while the Petitioner would exclude this employee from the unit.

As described by Michael Smith, the duties of the cogen technician are to operate and maintain the cogen unit. Ochs physically works both at the control center and the cogen building, which is located a couple of hundred feet from the control room. Ochs spends approximately one and one half hours per day, five days a week, in the control room watching the cogen unit. The remainder of his time is spent in the cogen unit.

At the cogen building, Ochs cleans the oil centrifuge by hand on a weekly basis and adjusts items to maximize electrical production with steam rates. He also oils and greases high speed rotating equipment and either by hand or with a rake, cleans the cooling tower of vegetation, algae and other build-up.

Although the boiler is located in the cogen building, Ochs monitors it from the control room. In this regard his duty is similar to the shift leader who monitors the plant processes on the control board. Ochs communicates regularly with the control room operators (shift leaders), setting up run parameters at the cogen unit to create the most steam without damaging the boiler.

Ochs also communicates with the outside operators (reactor cogen operators) on a daily basis making necessary adjustments to the equipment. For example, based on changes at the cogen unit, operators may have to adjust flow rates to the incinerator or take gas from the cogen unit in order to maintain heating efficiencies in the drying process.

The record revealed that prior to June 2003, Ochs held the position of shift supervisor; then transferred to the position of cogen technician. Ochs wears the same uniform as the operators and receives the same benefits that accrue in the same manner. Ochs reports to Michael Smith, operations manager, but does not have any direct reports.³

Analysis

The Petitioner seeks to exclude the cogen technician from the unit contending he lacks a sufficient community of interest with the petitioned-for employees, whereas the Employer contends this employee shares a community of interest with the petitioned-for employees and should be included in the unit.

Under Section 9(b) of the Act, the Board has broad discretion to determine “the unit appropriate for the purposes of collective bargaining” in each case “in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act.” *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 494-97 (1985); *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950) *enfd* 190 F.2d 576 (7th Cir. 1951). The Act does not require a unit to be the most appropriate unit or the only appropriate unit. The Act only requires that the unit be appropriate to ensure to employees the fullest freedom in exercising their rights under the Act. *Id.* In determining an appropriate unit, the Board first examines whether the petitioned-for unit

³ While Petitioner’s witness Robert Smith testified that he believes Ochs is a supervisor, the Petitioner has not argued that Ochs is a statutory supervisor and should be excluded on that basis. As neither party contends that Ochs is a supervisor, I find it unnecessary to make such a determination.

possesses a separate community of interest. *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). A variety of factors are involved in determining whether employees share a community of interest. The factors include, but are not limited to, the nature of employee skills and functions, common supervision, work situs, interchangeability and contact among employees, wages and benefits, and work conditions. *Harron Communications, Inc.*, 308 NLRB 62 (1992); *Boudreaux's Drywall, Inc.*, 308 NLRB 777 (1992). The burden of proving that the petitioned-for unit is inappropriate lies with the party challenging the unit's appropriateness. *Livingstone College*, 290 NLRB 304, 305 (1988).

Applying the above precedent and general community of interest standards, I find that the cogen technician shares such a substantial community of interest with the petitioned-for employees so as to mandate his inclusion in the appropriate unit. The evidence established that the cogen technician's primary duties are to monitor and maintain the cogen unit. In this capacity, the cogen technician has daily interaction with the outside operators and the control board operators (shift leaders) as they must coordinate the carbon black processes with the cogen processes. The cogen technician's function, skills and working conditions are similar to the control room operator (shift leaders) as he monitors the cogen process from the same control room. The cogen technician's function, skills and working conditions are also similar to the outside operators as he spends a portion of his time manually maintaining equipment. The evidence revealed that he wears the same uniform as the operators and receives the same benefits that accrue in the same manner. The evidence also revealed similar supervision as the cogen technician, like the DCS technicians and shift leaders, reports to the operations manager. Considering these factors, I find that the cogen technician shares such a substantial community

of interest with the operators and shift leaders so as to mandate his inclusion in the appropriate bargaining unit.

II. Laboratory—Lab Quality Assurance Specialist

The laboratory department includes lab technicians and a lab quality assurance specialist. The parties stipulated that the lab technicians should be included in the appropriate bargaining unit. The Employer seeks to include the lab quality assurance specialist (Don Melton) in the bargaining unit while the Petitioner would not include this employee.

The record revealed that the lab quality assurance specialist is primarily responsible for generating a customer report called the certificate of analysis (COA). In order to generate the COA, the lab quality assurance specialist compiles lab data from tests conducted by the lab technicians. The lab quality assurance specialist works in an office approximately fifteen feet from the lab. Although there is evidence that the lab quality assurance specialist interacts with the lab technicians in order to obtain the lab data, the record is unclear on the extent of the interaction.

The lab technicians and the lab quality assurance specialist report to the same technical manager. However, the lab technicians also report to Dean Agerton, lab supervisor, while the lab quality assurance specialist does not. The record further revealed that the lab technicians and the lab quality assurance specialist have different schedules because the lab technicians work on various shifts. The lab technicians and the lab quality assurance specialist wear the same uniform, have a common break room and have similar benefits that accrue in the same manner, i.e. hospitalization, vacation, etc. Although the lab technicians are paid on an hourly basis, the record is unclear how the lab quality assurance specialist is paid.

Analysis

The Petitioner seeks to exclude the lab quality assurance specialist from the unit contending he lacks a sufficient community of interest with the petitioned-for employees, whereas the Employer contends this employee shares a community of interest with the petitioned-for employees and should be included in the unit.

Applying the general community of interest standards, *supra*, I find that the quality lab assurance specialist shares such a substantial community of interest with the petitioned-for employees so as to mandate his inclusion in the appropriate unit. The evidence revealed that the primary duty of the lab quality assurance specialist is to generate a COA report which is compiled from lab data produced by lab technicians. In order to obtain such data, the lab quality assurance specialist interacts with the lab technicians. Although the lab technicians are located in the lab and the lab quality assurance specialist is located in a different office, the evidence revealed that the office is within fifteen feet of the lab. Further, the evidence revealed similar working conditions (office environment), similar benefits and similar supervision. Considering these factors, I find that the lab quality assurance specialist shares a substantial community of interest with the lab technicians and must be included in the appropriate bargaining unit.

III. Shipping—Transportation Coordinator

The shipping department includes shipping associates and a transportation coordinator. The shipping associates package the product in hopper cars, boats, trucks or other means of transportation. The parties stipulated that the shipping associates should be included in the bargaining unit. The Employer seeks to include the transportation coordinator (Ernie Edwards) in the bargaining unit while the Petitioner would exclude this employee from the unit.

The evidence revealed that the primary duty of the transportation coordinator is to coordinate shipments, trucks and loads leaving the plant. Other duties include preparing

paperwork, such as bills of lading associated with the shipping process and conducting inventory of the product. Former Transportation Coordinator Pamela Sue Myers⁴ testified that she performed inventory duties approximately one hour per day and for the entire day on the last two days of the month.

The record revealed that the transportation coordinator works in a separate building known as the shipping building. The shipping building is a couple of hundred feet from the warehouse where the shipping associates are located. The record revealed the transportation coordinator reports to the material flow manager, Richard Craig Maxwell. The shipping associates report to the transportation flow manager as well, but also report to a shipping supervisor (Kevin E. Beasley) and a warehouse supervisor (Jackie C. Dennis).

Although the amount is unclear, the record revealed that there is interface between the transportation coordinator and the shipping associates in coordinating the shipments leaving the plant. Michael Smith and Meyer both testified that on occasion the transportation coordinator goes to the warehouse or the shipping associates come to the transportation coordinator's office to coordinate paperwork and shipments. Myers testified that the interaction occurred daily at times.

The record revealed that the transportation coordinator and the shipping associates wear the same uniform and have similar benefits. However, the work hours differ with the shipping associates working on shifts and the transportation coordinator working between 6:30 or 7:00 a.m. to around 3:30 or 4:00 p.m. Shipping associates are paid on an hourly basis and the transportation coordinator although nominally salaried, is not exempt, receives \$17.86 per hour and is eligible for overtime pay.

⁴ Myers has not held the position of transportation coordinator for over a year and does not know if the position has

Analysis

The Petitioner seeks to exclude the transportation coordinator from the unit contending he lacks a sufficient community of interest with the petitioned-for employees, whereas the Employer contends this employee shares a community of interest with the petitioned-for employees and should be included in the unit.

Applying the general community of interest standards, *supra*, I find that the transportation coordinator shares such a substantial community of interest with the petitioned-for employees so as to mandate his inclusion in the appropriate unit. The evidence revealed that the primary duty of the transportation coordinator is to coordinate shipments of carbon black leaving the plant. This function is directly related to the function of the shipping associates who are responsible for packaging the product. Although the evidence revealed that the shipping associates are located in the warehouse and the transportation coordinator works in a separate building, both buildings are located on the Orange plant premises. Further, the evidence revealed that in the performance of her duties, the transportation coordinator may have daily interaction with the shipping associates. The evidence revealed that the shipping associates and the transportation coordinator wear the same uniform and have similar benefits. Considering these factors, I find that the transportation coordinator shares such a substantial community of interest with the shipping associates so as to mandate her inclusion in the appropriate bargaining unit.

SUMMARY OF FINDINGS

Based on the record testimony, I find that the shift leaders are not supervisors within the meaning of the Act. I further find that the petitioned-for unit must include the cogen technician,

lab quality assurance specialist and the transportation coordinator because of the substantial community of interest between these employees

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The parties stipulated, and I find, that the Employer, Degussa Engineered Carbons, LP, a Delaware limited partnership, is engaged in the business of manufacturing carbon black, with a facility in Orange, Texas, the only facility involved herein. During the preceding twelve months, a representative period, the Employer in conducting its business operations purchased and received at its Orange, Texas facility goods valued in excess of \$50,000 directly from points outside the State of Texas. Based on the foregoing, I find the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner claims to represent certain employees of the Employer.

4. The parties stipulated to the Petitioner's labor organization status.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All production, maintenance, shipping and laboratory employees including shift leaders, operators, DSC technicians, cogen

technicians, I/E technicians, maintenance technicians, shipping associates, transportation coordinator, lab technicians and lab quality assurance specialist employed at the Employers facility in Orange, Texas.

EXCLUDED: All other employees including office clerical employees, professional employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Paper, Allied-Industrial, Chemical and Energy Workers International Union.

The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the

strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Houston Resident Office, Mickey Leland Federal Building, 1919 Smith Street, Suite 1545, Houston, Texas 77002 on or before **May 20, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 713-209-4890. Since the list will be made available to all parties to the election, please furnish a total of

two copies, unless the list is submitted by facsimile, in which case no copies need be submitted.

If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. ***Club Demonstration Services***, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST **on May 27, 2004**. The request may **not** be filed by facsimile.

Dated: **May 13, 2004**

/s/ Curtis A. Wells
Curtis A. Wells, Regional Director,
National Labor Relations Board
Region 16
819 Taylor Street - Room 8A24
Fort Worth, TX 76102